



DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP-2021-0028]

Receipt of Domestic Interested Party Petition Concerning the Tariff Classification of Dried Onion Products

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of receipt of domestic interested party petition; solicitation of comments.

SUMMARY: U.S. Customs and Border Protection (CBP) has received a petition submitted on behalf of a domestic interested party requesting the reclassification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain dried onion products. CBP currently classifies the subject dried onion products under subheading 2005.99.20, HTSUS, as onions prepared or preserved otherwise than by vinegar or acetic acid. Petitioner contends that the proper classification for the subject dried onion products is under subheading 0712.20.20, HTSUS, as dried onion powder not further prepared. This document invites comments with regard to the correctness of the current classification.

DATES: Comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: You may submit comments, identified by docket number, by the first method listed below:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2021-0028.
- **Mail:** Due to COVID-19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

Instructions: All submissions received must include the agency name and docket number for this notice of domestic interested party petition concerning the tariff classification of dried onion products. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents, exhibits, or comments received, go to <http://www.regulations.gov>. Due to the relevant COVID-19-related restrictions, CBP has temporarily suspended on-site public inspection of public comments.

FOR FURTHER INFORMATION CONTACT: Tanya Secor, Food, Textiles and Marking Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, at (202) 325-0062 or by e-mail at tanya.j.secor@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

A petition has been filed under section 516 of the Tariff Act of 1930, as amended (19 U.S.C. § 1516), on behalf of Olam West Coast Inc. (Petitioner or Olam), which is an agri-business and supplier of food, ingredients, and raw materials, based in Fresno, California. Olam manages a wide range of production, processing, and supply of agricultural products in twelve states, with a majority of its operations in California. Olam's largest onion and garlic plant is in Gilroy, California. Olam meets all of the requirements of a domestic interested party set forth in 19 U.S.C. 1516(a)(2) and section 175.3(a) in title 19 of the Code of Federal Regulations (19 CFR 175.3(a)).

In New York Ruling Letter (NY) N265994 (July 9, 2015), NY N261449 (February 20, 2015), NY N257752 (October 24, 2014), and NY M86441 (October 13, 2006), CBP classified various mixtures of onion powder and salt or other ingredients as prepared or preserved onions in subheading 2005.99.20 of the Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other vegetables prepared

or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006: Other vegetables and mixtures of vegetables: Other: Onions.” Petitioner contends that the proper classification for the onion powder mixtures is dried onion powder in subheading 0712.20.20, HTSUS, which provides for “Dried vegetables, whole, cut, sliced, broken or in powder, but not further prepared: Onions: Powder or flour.”

Applicable Legal Principles

Classification under the HTSUS is determined in accordance with the General Rules of Interpretation (GRIs) and, in the absence of special language or context which otherwise requires, by the Additional U.S. Rules of Interpretation (ARIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, GRIs 2 through 6 may be applied in order. GRI 3(b) applies to mixtures, which are *prima facie*, classifiable under two or more headings and which cannot be classified by reference to GRI 3(a). Pursuant to GRI 3(b), mixtures shall be classified as if they consisted of the material or component which gives them their essential character.

Note 3 to Chapter 7, HTSUS, provides that heading 0712 covers all dried vegetables of the kinds falling in headings 0701 to 0711, excluding certain vegetables but including onions. Note 1(a) to Chapter 20, HTSUS, provides that this chapter does not cover vegetables, fruit or nuts, prepared or preserved by the processes specified in Chapter 7, 8, or 11. Conversely, Note 3 to Chapter 20, HTSUS, provides in pertinent part that heading 2005 covers, as the case may be, only those products of Chapter 7, which have been prepared or preserved by processes other than those referred to in Note 1(a).

The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff at the international level.

While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* Treasury Decision (T.D.) 89-80, 54 FR 35127, 35128 (August 23, 1989).

The General EN to Chapter 7, HTSUS, provides, in pertinent part, that this Chapter covers vegetables, including the products listed in Note 2 to the Chapter, whether fresh, chilled, frozen (uncooked or cooked by steaming or boiling in water), provisionally preserved or dried (including dehydrated, evaporated or freeze-dried), and that some of these products when dried and powdered are sometimes used as flavoring materials but nevertheless remain classified in heading 07.12. The EN further states that vegetables prepared or preserved by any process not provided for in Chapter 7 fall in Chapter 20. The EN for heading 07.12 states, in pertinent part, that the heading covers vegetables of headings 07.01 to 07.11 which have been dried (including dehydrated, evaporated or freeze-dried) i.e., with their natural water content removed by various processes. The EN further provides that heading 0712, HTSUS, covers dried vegetables, broken or powdered, such as asparagus, cauliflower, parsley, chervil, onion, garlic, celery, generally used either as flavouring materials or in the preparation of soups. The EN for heading 20.05 states, in pertinent part, that the heading covers products (other than vegetables prepared or preserved by vinegar or acetic acid of heading 20.01, frozen vegetables of heading 20.04 and vegetables preserved by sugar of heading 20.06) that have been prepared or preserved by processes not provided for in Chapter 7 or 11.

Elaboration of the Petitioner's Views

Petitioner contends that the proper classification for the subject dried onion products is subheading 0712.20.20, HTSUS, which provides for “Dried vegetables, whole, cut, sliced, broken or in powder, but not further prepared: Onions: Powder or flour.” Petitioner contends that the subject onion products are (1) preserved by drying

and, therefore, excluded from Chapter 20, HTSUS; (2) neither “preserved” nor “prepared” in a manner covered by Chapter 20, HTSUS; and (3) not “prepared” or “preserved” under the “common and commercial meaning” of those terms. Specifically, Petitioner argues that the subject dried onion products are neither prepared nor preserved because the small quantities of salt or preservatives do not create a permanent change to the onion powder. In support of its argument, Petitioner relies on Headquarters Ruling Letter (HQ) H243645 (September 30, 2015) wherein CBP classified dried sliced and diced potatoes with added sodium bisulfate under subheading 0712.90.30, HTSUS, as dried potatoes not further prepared. In HQ H243645, CBP determined that sodium bisulfite simply preserved the potatoes’ freshness, color and flavor, and did not further prepare the product.

Petitioner asserts that to the extent the products are mixtures of multiple ingredients, the essential character of these products remains onion powder and therefore they should be classified under 0712.20.20, HTSUS, pursuant to GRI 3(b). Petitioner also argues that classifying such products as “prepared” or “preserved” is contrary to the intention to protect domestic production of dried onion as indicated by the high tariff rate applicable to dried onion and dried onion powder.

Analysis Used by CBP in Prior Rulings

Subheading 2005.99.20, HTSUS, provides for “Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006: Other vegetables and mixtures of vegetables: Other: Onions.” The EN for heading 07.12 provides guidance that the heading covers dried vegetables in powder form, including onion, not otherwise prepared. If a dried vegetable product is prepared beyond the scope of heading 0712, HTSUS, it will be precluded from classification in that heading and classifiable in heading 2005, HTSUS.

In the rulings at issue, the dried onion products are comprised of dried onion powder and varying additional ingredients. Specifically, NY N265994 classified agglomerated onion powder consisting of 94.5% dried onion powder, 5% water, and 0.5% of maltodextrin, silicon dioxide, and potassium sorbate combined. NY N261449 classified onion and salt powders blended in five different formulations: 91% onion powder and 9% salt; 93% onion powder and 7% salt; 95% onion powder and 5% salt; 97% onion powder and 3% salt; and 99% onion powder and 1% salt. NY N257752 classified five products, two of which were comprised of onion powder and salt. The first consisted of 80% onion powder and 20% salt and the second consisted of 90% onion powder and 10% salt. Finally, NY M86441 classified agglomerated onion powder consisting of 88.5% dehydrated onion powder, 5% water, 4% corn starch, 1% Arabic gum, 1% silicon dioxide, and 0.5% citric acid. CBP determined that the addition of salt and other ingredients, regardless of the proportions, further prepared the onion powder beyond the scope of heading 0712, HTSUS. Thus, these dried onion products were classified pursuant to GRI 1 in subheading 2005.99.20, HTSUS, as onions prepared or preserved otherwise than by vinegar or acetic acid.

Comments

Pursuant to section 175.21, CBP Regulations (19 CFR 175.21), before making a determination on this matter, CBP invites written comments on the petition from interested parties.

The domestic interested party petition concerning the tariff classification of certain dried onion products, as well as all comments received in response to this notice, will be available for public inspection on the docket at www.regulations.gov.

Authority

This notice is published in accordance with 19 U.S.C. 1516 and section 175.21 of the CBP Regulations (19 CFR 175.21).

Troy A. Miller, the Acting Commissioner, having reviewed and approved this document, is delegating the authority to electronically sign this document to Robert F.

Altneu, who is the Director of the Regulations and Disclosure Law Division for CBP, for purposes of publication in the *Federal Register*.

Dated: August 6, 2021.

Robert F. Altneu,

Director, Regulations & Disclosure Law Division,

Regulations & Rulings,

Office of Trade,

U.S. Customs and Border Protection.

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